

REPORT OF COMMUNICATIONS WITH THE ILLINOIS POWER AGENCY

This form must be completed and submitted to the Illinois Procurement Policy Board within 30 days for each communication report required by 30 ILCS 500/50-39. Submit reports to:

PROCUREMENT POLICY BOARD
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SPRINGFIELD, IL 62704

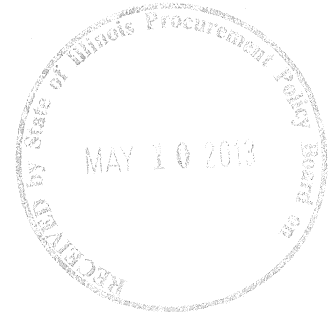
Or you may send a signed, scanned copy via email with "IPA Communication Report" in the Subject line to: ppb@illinois.gov

Date of Communication: 4/18-22/13

Time of Communication: 11:21 AM

Type of Communication:

- ☐ Telephone
☐ In Person
☒ Electronic (Email, Fax, Etc.) – Attach A Complete Copy of the Entire Communication String
☐ Written – Attach Copy
☐ Other



Initiator:

Initiator of Communication: Thomas Russell
Representing: ComEd
Location: Chicago, IL
Email Address (if communication was via email): thomas.russell@exeloncorp.com
Telephone Number (if telephonic):

Is this person a Lobbyist required to register under the Lobbyist Registration Act ☐ Yes ☒ No

Recipient(s): (If there are additional persons involved in the communication, attach an additional sheet that lists the other participants' names, job titles, which entity they represent, email address and/or telephone number, if applicable)

Recipient One Name: Anthony Starr
Recipient Title: Director
Representing: IPA
Location: Chicago, IL
Email Address (if communication was via email): anthony.starr@illinois.gov
Telephone Number (if telephonic):

Recipient Two Name: see attached e-mail chain
Recipient Title:

Representing:
Location:
Email Address (if communication was via email):
Telephone Number (if telephonic):

Recipient Three Name:
Recipient Title:
Representing:
Location:
Email Address (if communication was via email):
Telephone Number (if telephonic):

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Communication Details:

Provide a detailed summary of the points made by each person involved in the communication:
Describes discussion that ComEd with the long-term renewable suppliers regarding the ICC-required curtailment of purchases from the suppliers.

Was a response made? If so, complete the following for each person making the response (attach an additional sheet that lists the other respondents' names, job titles, which entity they represent, email address and/or telephone number, if applicable):

Respondent Name:

See attached e-mail chain

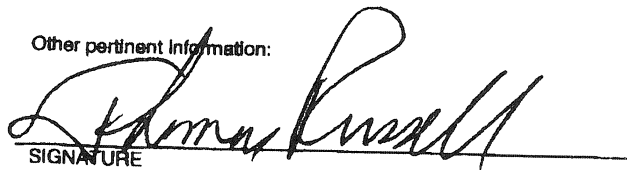
Respondent Title:

Location:

Telephone Number (if telephonic):

Provide a detailed summary of the response:

Other pertinent information:


SIGNATURE


DATE

Grier, Adrienne C:(ComEd)

From: Russell, Thomas J.:(BSC)
Sent: Thursday, April 18, 2013 11:21 AM
To: 'Richard Zuraski'; 'Feeley, John'; 'Katherine Gottshall'; 'agisselquist@bostonpacific.com'; 'Star, Anthony'; '@ Strong, Michael R'
Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd)
Subject: Supplier Questions
Attachments: LT Renewables QA 041813.docx

All,

We had several meetings this week with a number of the long-term renewable suppliers concerning the implementation of the curtailment and the purchase of the RECs. There were two general issues they raised they we promised to get back to them with answers after discussing the issues with you folks. The attached document contains proposed responses to those two issues. The first relates to the determination of the imputed REC price for the purchase of the new RECs. We really do not believe that there is any uncertainty as to that price, but since several suppliers raised it here and in the context of the IPA's separate REC procurement process, we thought it worthwhile to put a response in writing. Second, a more difficult question relates to the application of the shortfall, carry-over and applicable percentage provisions in the long-term renewable contracts in light of the curtailment. We believe the contract language is susceptible to several reasonable interpretations. We opted for an interpretation that we thought was supportable and fair to all parties.

Please let us know if you have any suggestions or revisions to our answers. If you think it would be helpful to discuss, let me know and I can set up a conference call for us.

After we reach a consensus on the answers we need to get back to the suppliers. We can send to all suppliers or, if you think more appropriate, we could post on the IPA website in a manner similar to how we usually have handled supplier questions. In fact, it would be useful to discuss how to handle this going forward or for next year. It may be more appropriate to use a process that we typically have used and to have the contracts go out through the IPA and to have all supplier contact go through the IPA as well. Let us know what you think. We can continue with how we have been proceeding for now, but really would like to discuss this with you for next year.

Grier, Adrienne C:(ComEd)

From: Zuraski, Richard [rzuraski@icc.illinois.gov]
Sent: Monday, April 22, 2013 10:42 AM
To: Russell, Thomas J.:(BSC)
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions
Attachments: Carryforward and back version 3.xlsx

Tom,

BP also had problems with my Column N. It is because I made an error with Column N (which also led to errors to the right of Column N). I think that the attached file corrects the errors. Note, however, that all the columns to the right of K are unnecessary to describe the rule. They were added in an attempt to understand some of the consequences of the rule.

Of Andrew's three options, I can support either 1 or 3.

I am available anytime today to discuss, if necessary.

From: @ Russell, Thomas
Sent: Saturday, April 20, 2013 2:41 PM
To: agisselquist@bostonpacific.com; Zuraski, Richard
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
Subject: RE: Supplier Questions

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I agree that legally, option 3 is the most supportable and, arguably, the fairest to the losing bidders and to other suppliers who are not having problems meeting their requirements. Alternatively, while Option 1 is a bit of a stretch, it is arguably contractually supportable and provides some assistance to those struggling. Option 2 is more problematic and would seemingly require some amendment to the agreement. I am not sure how this would work, but it also worries me to indicate to the suppliers that these agreements are still negotiable and subject to revision whenever they run into a problem.

We have been reviewing Rich's worksheet. Most of it we agree with but are having some difficulty understanding Coll. N. We may need to have a call Monday morning to go over this. Steve and Eric are still going over the material.

From: Andrew Gisselquist [<mailto:agisselquist@bostonpacific.com>]
Sent: Fri 4/19/2013 5:42 PM
To: Zuraski, Richard; Russell, Thomas J.:(BSC)
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
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On the applicable percentage question, BP is weighing in to point out a couple implications of the approach being considered by ComEd and Richard, as well as two alternative options. The attached file has examples for each of these three Options, the same three examples (in terms of REC production) for each. That excel file is just a modification of what Richard recently sent around.

Option 1 is what ComEd and Richard have been discussing. It can be described generally – as the suppliers' Annual Contract Quantity is curtailed, so too is their applicable percentage. However, suppliers are given the previous year's applicable percentage in order to supply RECs to make up the previous year's shortfall. Some implications include:

- A. Suppliers who face a shortfall in production in Year 1 and then produce as many RECs "as expected" going forward are never able to make up that shortfall ("as expected" production in the example is 1 million RECs, equal to the annual contract quantity divided by the applicable percentage the supplier bid in).
- B. If the applicable percentage goes down from Year T to Year T+1, this method does help suppliers meet their annual contract quantity, as compared to requiring suppliers to use the applicable percentage from the current year only.
- C. However, if the applicable percentage goes back up from Year T to Year T+1, suppliers may face problems fulfilling their contracts if they are initially held to last year's lower applicable percentage when making up any shortfall from last year. That is, if a supplier's applicable percentage went from 40% in Year 2 to 50% in Year 3, but they were forced to start out the year at 40% applicable percentage, that supplier would have a hard time meeting their annual contract quantity for Year 3.

Option 2 is to allow suppliers to choose an applicable percentage of anywhere between the curtailed percentage and the applicable percentage that they bid. In Year 2 this would allow the supplier to choose an applicable percentage for that year of anywhere from 40% to 50%.

- A. Option 2 gives suppliers more flexibility to make up any shortfall – in the attached example see Option 2, row 8 where the supplier chooses an applicable percentage of 45% instead of 40%. This eliminates the shortfall for the remaining years.
- B. However, it is unclear to us if such a method is consistent with the contracts as written. If the relevant lawyers agree, this may not be a productive direction to go in.

Finally, Option 3, which may be more straightforward than either other option. In Option 3, Suppliers simply maintain the current year's applicable percentage for the entire year. See tab "Option 3" in the attached file.

- A. As suppliers have mentioned on phone calls, with something like Option 3 they may have a hard time meeting their annual contract quantity and filling shortfalls from the previous year if the applicable percentage declines, as is happening now.
- B. Option 3 implicitly argues that suppliers should have bid cautiously. If suppliers face shortfalls because their overall production is not as high as expected, they have to either hope their wind farm produces more in the future or they will have to make those shortfalls up. Note that all the concerns about suppliers perpetually having to carry forward shortfalls disappear if a supplier's wind farm "overproduces" enough in a year (see tab "Option 3", row 18 where the wind farm produces 1.1 million RECs and there is no shortfall going forward).
- C. Option 3 does not have the same concern about a bounce back up in applicable percentage as with Option 1, point C – suppliers simply face one applicable percentage all year long.

Boston Pacific would probably support Option 3 as a compromise position. With it, the treatment of applicable percentage can be consistent with from year to year, no matter whether curtailments increase or decrease. Option 1 also has benefits, but we are concerned about what may happen if the applicable percentage ever goes back up - issue C above. That is, unless suppliers could be given flexibility to use the larger applicable percentage in that case. Option 2 has benefits of flexibility for suppliers but there are the concerns about how it fits with the existing contract. Also, to the extent it may change the contract rules, it may frustrate bidders who did not win or win as much because they bid under a strict interpretation of the contract.

Andrew

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]
Sent: Friday, April 19, 2013 1:21 PM

To: @ Russell, Thomas

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; Andrew Gisselquist; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

Let's go one more round of emails before deciding if a conf call is needed to discuss the Applicable Percentage, et al.

By the way, thank you for the additional explanation. It was very helpful. I think that the attached spreadsheet (columns A – K) now embodies your proposal. Would you please confirm if that is true, for each of the four examples? If true, then the proposal seems fair and reasonable to me, but I would like BP to tell us if they think otherwise, with concrete examples.

My preference would be to proceed without contract amendments, but if BP believes that the contract's original intent or spirit (or whatever you want to call it) is being violated by the proposal, amending the contract may be more appropriate. But let's see what they have to say, first.

On a separate topic, Andrew G. from BP said in a recent email:

First, we haven't heard anything about ComEd's first Q&A, on the interpretation of the imputed REC price. Does that mean we all agree with ComEd on that point? Boston Pacific would be fine with that.

I just wanted to confirm that ICC Staff is also fine with that.

Thanks.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

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Thank you for your cooperation.

From: @ Russell, Thomas

Sent: Thursday, April 18, 2013 4:39 PM

To: Zuraski, Richard

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Rich,

Thanks for your response and proposal. We will take a look at it. One thing we were trying to achieve is to come up with a solution that we felt reasonably comfortable could be supported by the existing contractual language, as I am not sure how free we are to change it and how we would get that done and approved anyway. The operative language in regards to the "Applicable Percentage" is in section D of the Confirmation. It provides "...the Applicable Percentage shall be reduced proportional to the reduction in the Annual Contract Quantity for that Delivery Year." As I understand your proposal, you are proposing to reduce the Applicable Percentage proportionally but with a one-year lag, right? So, is that something you are comfortable implementing by posting the Q&A or having us circulate it to the suppliers explaining that is how we intend to interpret and apply the Applicable Percentage in this situation, or did you see a need to more formally amend the agreements in some fashion. We would prefer some posting or other notification if everyone is comfortable with what we eventually decide on.

As you note, our proposal (which is actually what the suppliers requested) has some similar contract interpretation issues. Section B(1) provides that any energy and RECs produced shall first be used to satisfy any shortfall from the previous Delivery Year. We thought it reasonable to interpret this to provide that the same Applicable Percentage that was in effect in the Delivery year in which the shortfall occurred should be used to make up that shortfall in the next Delivery Year. Once that shortfall is made up, the new Applicable Percentage would be in effect for the remainder of the second Delivery Year. I hope this helps with your understanding of our proposal.

Perhaps it would be best if we scheduled a call for tomorrow to go over the proposals. Let me know if you want us to do that.

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Thursday, April 18, 2013 3:16 PM

To: Russell, Thomas J.:(BSC)

Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd); Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

In the second Q&A, it states:

For a situation where the Applicable Percentage changes from one Delivery Year to the next, ComEd believes it is reasonable to use **two different Applicable Percentages** to make the above calculation. For the purposes of satisfying a short-fall from a previous Delivery Year, it is appropriate to use the Applicable Percentage for that Delivery Year. For the purposes of determining the Annual Contract Quantity for the current Delivery Year and any carry-over quantity for the next Delivery Year, the Applicable Percentage for the current Delivery Year should be used.

The above description confuses me, and I don't understand how there can be two Applicable Percentages in any given year (if that is what you mean). The Applicable Percentage is the percentage of output in each hour that is considered a part of the Contract. At what point in time within the year does the Applicable Percentage change, under your proposal?

In any event, I am wondering if it might be better to allow the suppliers to simply restate their Applicable Percentage, within certain bounds, whenever there is a change in contract quantities.

For example, suppose that in April of 2013, the current contract quantity (for the June 2012-May 2013 period) is 100% of the original contract quantity, but the supplier can choose to leave or go to 80% of the original contract quantity for the June 2013-May 2014 period. If the supplier's original and Applicable Percentage (for the June 2012-May 2013 period) was 50%, then for the upcoming June 2013-May 2014 period, the supplier could choose any Applicable Percentage between 50%x80% and 50%.

Suppose that, in April of 2014, the supplier can choose to leave or go from the 80% level to 70% of the original contract quantity for the June 2014-May 2015 period. For the June 2014-May 2015 period, the supplier could choose any Applicable Percentage between 50%x70% and 50%x80%.

So, to be clear, the new Applicable Percentage (AP_{t+1}) may be restated by the supplier, within the following bounds:

Between $AP_0 \times CQ_t / CQ_0$ and $AP_0 \times CQ_{t+1} / CQ_0$,

Where:

AP_0 is the original Applicable Percentage

CQ_0 is the original contract quantity

CQ_t is the current contract quantity (determined in the previous April)

CQ_{t+1} is the new contract quantity (determined in the present April)

The attached workbook provides a way to illustrate the simultaneous workings of the Applicable Percentage, the limitation on carrying excess production forward, and the limitation on carrying excess production backward to make up for a previous shortfall. As for the carrying forward and backward, I think I have captured what you describe in the Q&A. If so, I think it is reasonable and workable.

Note that, in the attached workbook, I simply assume that the supplier would choose to change the Applicable Percentage to as follows:

$$AP_{t+1} = AP_0 \times CQ_t / CQ_0$$

(notwithstanding my proposal to give the supplier a choice anywhere between $AP_0 \times CQ_t / CQ_0$ and $AP_0 \times CQ_{t+1} / CQ_0$)

If for some reason, you do not wish to provide suppliers with such a choice and want to propose using a rule, such a rule could be illustrated by changing the workbook formula for the Applicable Percentage.

Please let me know if you have any questions or comments about this approach. I am also interested in the IPA's and Boston Pacific's views on the matter.

Thanks you.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

IMPORTANT NOTICE:

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Thank you for your cooperation.

From: @ Russell, Thomas

Sent: Thursday, April 18, 2013 11:21 AM

To: Zuraski, Richard; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R

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This e-mail and any attachments are confidential, may contain legal, professional or other privileged information, and are intended solely for the addressee. If you are not the intended recipient, do not use the information in this e-mail in any way, delete this e-mail and notify the sender. -EXCIP

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☐ Other

Initiator:

Initiator of Communication: Thomas Russell
Representing: ComEd
Location: Chicago, IL
Email Address (if communication was via email): thomas.russell@exeloncorp.com
Telephone Number (if telephonic):

Is this person a Lobbyist required to register under the Lobbyist Registration Act ☐ Yes ☒ No

Recipient(s): (If there are additional persons involved in the communication, attach an additional sheet that lists the other participants' names, job titles, which entity they represent, email address and/or telephone number, if applicable)

Recipient One Name: Anthony Starr
Recipient Title: Director
Representing: IPA
Location: Chicago, IL
Email Address (if communication was via email): anthony.starr@illinois.gov
Telephone Number (if telephonic):

Recipient Two Name: see attached e-mail chain
Recipient Title:
Representing:
Location:
Email Address (if communication was via email):
Telephone Number (if telephonic):

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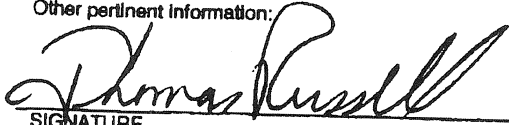
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Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); 'Feeley, John'; 'kgottshall@bostonpacific.com'; '@ Star, Anthony'; '@ Strong, Michael R'; 'Kennedy, Tom'; 'agisselquist@bostonpacific.com'
Subject: RE: Supplier Questions
Attachments: Curtailment Clarification 4 29 13.pdf; Response to Supplier 043013.docx

All,

We received some follow-up questions from one of the suppliers, FPL. We drafted a response to the first question that we would intend to again circulate to all suppliers once we reach agreement. The other two questions we will respond to more informally directly to FPL. We think we already responded to the attached question, but elaborated a bit more. Let us know if you have any suggestions or are ok with our proposed response.

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- A. Suppliers who face a shortfall in production in Year 1 and then produce as many RECs "as expected" going forward are never able to make up that shortfall ("as expected" production in the example is 1 million RECs, equal to the annual contract quantity divided by the applicable percentage the supplier bid in).
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Finally, Option 3, which may be more straightforward than either other option. In Option 3, Suppliers simply maintain the current year's applicable percentage for the entire year. See tab "Option 3" in the attached file.

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Boston Pacific would probably support Option 3 as a compromise position. With it, the treatment of applicable percentage can be consistent with from year to year, no matter whether curtailments increase or decrease. Option 1 also has benefits, but we are concerned about what may happen if the applicable percentage ever goes back up - issue C above. That is, unless suppliers could be given flexibility to use the larger applicable percentage in that case. Option 2 has benefits of flexibility for suppliers but there are the concerns about how it fits with the existing contract. Also, to the extent it may change the contract rules, it may frustrate bidders who did not win or win as much because they bid under a strict interpretation of the contract.

Andrew

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Friday, April 19, 2013 1:21 PM

To: @ Russell, Thomas

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; Andrew Gisselquist; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

Let's go one more round of emails before deciding if a conf call is needed to discuss the Applicable Percentage, et al.

By the way, thank you for the additional explanation. It was very helpful. I think that the attached spreadsheet (columns A – K) now embodies your proposal. Would you please confirm if that is true, for each of the four examples? If true, then the proposal seems fair and reasonable to me, but I would like BP to tell us if they think otherwise, with concrete examples.

My preference would be to proceed without contract amendments, but if BP believes that the contract's original intent or spirit (or whatever you want to call it) is being violated by the proposal, amending the contract may be more appropriate. But let's see what they have to say, first.

On a separate topic, Andrew G. from BP said in a recent email:

First, we haven't heard anything about ComEd's first Q&A, on the interpretation of the imputed REC price. Does that mean we all agree with ComEd on that point? Boston Pacific would be fine with that.

I just wanted to confirm that ICC Staff is also fine with that.

Thanks.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

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Thank you for your cooperation.

From: @ Russell, Thomas

Sent: Thursday, April 18, 2013 4:39 PM

To: Zuraski, Richard

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Rich,

Thanks for your response and proposal. We will take a look at it. One thing we were trying to achieve is to come up with a solution that we felt reasonably comfortable could be supported by the existing contractual language, as I am not sure how free we are to change it and how we would get that done and approved anyway. The operative language in regards to the "Applicable Percentage" is in section D of the Confirmation. It provides "...the Applicable Percentage shall be reduced proportional to the reduction in the Annual Contract Quantity for that Delivery Year." As I understand your proposal, you are proposing to reduce the Applicable Percentage proportionally but with a one-year lag, right? So, is that something you are comfortable implementing by posting the Q&A or having us circulate it to the suppliers explaining that is how we intend to interpret and apply the Applicable Percentage in this situation, or did you see a need to more formally amend the agreements in some fashion. We would prefer some posting or other notification if everyone is comfortable with what we eventually decide on.

As you note, our proposal (which is actually what the suppliers requested) has some similar contract interpretation issues. Section B(1) provides that any energy and RECs produced shall first be used to satisfy any shortfall from the previous Delivery Year. We thought it reasonable to interpret this to provide that the same Applicable Percentage that was in effect in the Delivery year in which the shortfall occurred should be used to make up that shortfall in the next Delivery Year. Once that shortfall is made up, the new Applicable Percentage would be in effect for the remainder of the second Delivery Year. I hope this helps with your understanding of our proposal.

Perhaps it would be best if we scheduled a call for tomorrow to go over the proposals. Let me know if you want us to do that.

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Thursday, April 18, 2013 3:16 PM

To: Russell, Thomas J.:(BSC)

Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd); Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

In the second Q&A, it states:

For a situation where the Applicable Percentage changes from one Delivery Year to the next, ComEd believes it is reasonable to use *two different Applicable Percentages* to make the above calculation. For the purposes of satisfying a short-fall from a previous Delivery Year, it is appropriate to use the Applicable Percentage for that Delivery Year. For the purposes of determining the Annual Contract Quantity for the current Delivery Year and

any carry-over quantity for the next Delivery Year, the Applicable Percentage for the current Delivery Year should be used

The above description confuses me, and I don't understand how there can be two Applicable Percentages in any given year (if that is what you mean). The Applicable Percentage is the percentage of output in each hour that is considered a part of the Contract. At what point in time within the year does the Applicable Percentage change, under your proposal?

In any event, I am wondering if it might be better to allow the suppliers to simply restate their Applicable Percentage, within certain bounds, whenever there is a change in contract quantities.

For example, suppose that in April of 2013, the current contract quantity (for the June 2012-May 2013 period) is 100% of the original contract quantity, but the supplier can choose to leave or go to 80% of the original contract quantity for the June 2013-May 2014 period. If the supplier's original and Applicable Percentage (for the June 2012-May 2013 period) was 50%, then for the upcoming June 2013-May 2014 period, the supplier could choose any Applicable Percentage between $50\% \times 80\%$ and 50% .

Suppose that, in April of 2014, the supplier can choose to leave or go from the 80% level to 70% of the original contract quantity for the June 2014-May 2015 period. For the June 2014-May 2015 period, the supplier could choose any Applicable Percentage between $50\% \times 70\%$ and $50\% \times 80\%$.

So, to be clear, the new Applicable Percentage (AP_{t+1}) may be restated by the supplier, within the following bounds:

Between $AP_0 \times CQ_t/CQ_0$ and $AP_0 \times CQ_{t+1}/CQ_0$,

Where:

AP_0 is the original Applicable Percentage

CQ_0 is the original contract quantity

CQ_t is the current contract quantity (determined in the previous April)

CQ_{t+1} is the new contract quantity (determined in the present April)

The attached workbook provides a way to illustrate the simultaneous workings of the Applicable Percentage, the limitation on carrying excess production forward, and the limitation on carrying excess production backward to make up for a previous shortfall. As for the carrying forward and backward, I think I have captured what you describe in the Q&A. If so, I think it is reasonable and workable.

Note that, in the attached workbook, I simply assume that the supplier would choose to change the Applicable Percentage to as follows:

$$AP_{t+1} = AP_0 \times CQ_t/CQ_0$$

(notwithstanding my proposal to give the supplier a choice anywhere between $AP_0 \times CQ_t/CQ_0$ and $AP_0 \times CQ_{t+1}/CQ_0$)

If for some reason, you do not wish to provide suppliers with such a choice and want to propose using a rule, such a rule could be illustrated by changing the workbook formula for the Applicable Percentage.

Please let me know if you have any questions or comments about this approach. I am also interested in the IPA's and Boston Pacific's views on the matter.

Thanks you.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

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Thank you for your cooperation.

From: @ Russell, Thomas
Sent: Thursday, April 18, 2013 11:21 AM
To: Zuraski, Richard; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com
Subject: Supplier Questions

All,

We had several meetings this week with a number of the long-term renewable suppliers concerning the implementation of the curtailment and the purchase of the RECs. There were two general issues they raised they we promised to get back to them with answers after discussing the issues with you folks. The attached document contains proposed responses to those two issues. The first relates to the determination of the imputed REC price for the purchase of the new RECs. We really do not believe that there is any uncertainty as to that price, but since several suppliers raised it here and in the context of the IPA's separate REC procurement process, we thought it worthwhile to put a response in writing. Second, a more difficult question relates to the application of the shortfall, carry-over and applicable percentage provisions in the long-term renewable contracts in light of the curtailment. We believe the contract language is susceptible to several reasonable interpretations. We opted for an interpretation that we thought was supportable and fair to all parties.

Please let us know if you have any suggestions or revisions to our answers. If you think it would be helpful to discuss, let me know and I can set up a conference call for us.

After we reach a consensus on the answers we need to get back to the suppliers. We can send to all suppliers or, if you think more appropriate, we could post on the IPA website in a manner similar to how we usually have handled supplier questions. In fact, it would be useful to discuss how to handle this going forward or for next year. It may be more appropriate to use a process that we typically have used and to have the contracts go out through the IPA and to have all supplier contact go through the IPA as well. Let us know what you think. We can continue with how we have been proceeding for now, but really would like to discuss this with you for next year.

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addressee. If you are not the intended recipient, do not use the information in this e-mail in any way, delete this e-mail and notify the sender. -EXCIP

Grier, Adrienne C:(ComEd)

From: Star, Anthony [Anthony.Star@Illinois.gov]
Sent: Wednesday, May 01, 2013 10:46 AM
To: Russell, Thomas J.:(BSC); Strong, Michael; rzuraski@icc.illinois.gov
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: Re: Supplier Questions

Yes.

From: Thomas.Russell@exeloncorp.com [mailto:Thomas.Russell@exeloncorp.com]
Sent: Wednesday, May 01, 2013 10:11 AM Central Standard Time
To: Strong, Michael; rzuraski@icc.illinois.gov <rzuraski@icc.illinois.gov>
Cc: william.mcneil@ComEd.com <william.mcneil@ComEd.com>; stephen.lesniak@ComEd.com <stephen.lesniak@ComEd.com>; eric.long@ComEd.com <eric.long@ComEd.com>; james.baloun@ComEd.com <james.baloun@ComEd.com>; Feeley, John; kgottshall@bostonpacific.com <kgottshall@bostonpacific.com>; Star, Anthony; tkennedy@icc.illinois.gov <tkennedy@icc.illinois.gov>; agisselquist@bostonpacific.com <agisselquist@bostonpacific.com>
Subject: RE: Supplier Questions

So is the IPA ok with our proposed response?

From: Strong, Michael [mailto:Michael.Strong@Illinois.gov]
Sent: Tuesday, April 30, 2013 4:37 PM
To: Russell, Thomas J.:(BSC); rzuraski@icc.illinois.gov
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; Star, Anthony; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions

That is helpful confirmation of the IPA's understanding that ComEd does not plan to make any supplier-specific amendments to the agreement. The IPA is planning to take the same approach.

From: Thomas.Russell@exeloncorp.com [mailto:Thomas.Russell@exeloncorp.com]
Sent: Tuesday, April 30, 2013 4:21 PM
To: rzuraski@icc.illinois.gov
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; Star, Anthony; Strong, Michael; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions

Yes, generally to the effect the ComEd does not support making any amendments to the agreement.

From: Zuraski, Richard [mailto:rzuraski@icc.illinois.gov]
Sent: Tuesday, April 30, 2013 4:17 PM
To: Russell, Thomas J.:(BSC)
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom; Andrew Gisselquist
Subject: RE: Supplier Questions

Staff concurs with Boston Pacific comments w/r/t ComEd's proposed response to #1.

With respect to the "other two questions" to which ComEd "will respond to more informally directly to FPL," would I be correct in inferring that those responses will be variations on a theme of "no"?

From: Andrew Gisselquist [<mailto:agisselquist@bostonpacific.com>]

Sent: Tuesday, April 30, 2013 4:12 PM

To: @ Russell, Thomas; Zuraski, Richard

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

All,

Boston Pacific is fine with ComEd's proposed response to #1. Our only caveats are obvious ones: (1) the April date is missing in the second line under "Response", and (2) ComEd should remove FPL's Annual Percentage before circulating this response to other suppliers.

Andrew

From: Thomas.Russell@exeloncorp.com [<mailto:Thomas.Russell@exeloncorp.com>]

Sent: Tuesday, April 30, 2013 4:39 PM

To: rzuraski@icc.illinois.gov

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; jfeeley@icc.illinois.gov; Katherine Gottshall; anthony.star@illinois.gov; michael.strong@illinois.gov; tkennedy@icc.illinois.gov; Andrew Gisselquist

Subject: RE: Supplier Questions

All,

We received some follow-up questions from one of the suppliers, FPL. We drafted a response to the first question that we would intend to again circulate to all suppliers once we reach agreement. The other two questions we will respond to more informally directly to FPL. We think we already responded to the attached question, but elaborated a bit more. Let us know if you have any suggestions or are ok with our proposed response.

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Monday, April 22, 2013 10:42 AM

To: Russell, Thomas J.:(BSC)

Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom; agisselquist@bostonpacific.com

Subject: RE: Supplier Questions

Tom,

BP also had problems with my Column N. It is because I made an error with Column N (which also led to errors to the right of Column N). I think that the attached file corrects the errors. Note, however, that all the columns to the right of K are unnecessary to describe the rule. They were added in an attempt to understand some of the consequences of the rule.

Of Andrew's three options, I can support either 1 or 3.

I am available anytime today to discuss, if necessary.

From: @ Russell, Thomas
Sent: Saturday, April 20, 2013 2:41 PM
To: agisselquist@bostonpacific.com; Zuraski, Richard
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
Subject: RE: Supplier Questions

All,

I agree that legally, option 3 is the most supportable and, arguably, the fairest to the losing bidders and to other suppliers who are not having problems meeting their requirements. Alternatively, while Option 1 is a bit of a stretch, it is arguably contractually supportable and provides some assistance to those struggling. Option 2 is more problematic and would seemingly require some amendment to the agreement. I am not sure how this would work, but it also worries me to indicate to the suppliers that these agreements are still negotiable and subject to revision whenever they run into a problem.

We have been reviewing Rich's worksheet. Most of it we agree with but are having some difficulty understanding Coll. N. We may need to have a call Monday morning to go over this. Steve and Eric are still going over the material.

From: Andrew Gisselquist [<mailto:agisselquist@bostonpacific.com>]
Sent: Fri 4/19/2013 5:42 PM
To: Zuraski, Richard; Russell, Thomas J.:(BSC)
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
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All,

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To: @ Russell, Thomas

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Subject: RE: Supplier Questions

Tom,

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Sent: Thursday, April 18, 2013 4:39 PM
To: Zuraski, Richard
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony
Subject: RE: Supplier Questions

Rich,

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As you note, our proposal (which is actually what the suppliers requested) addresses the issues. Section B(1) provides that any energy and RECs produced shall be based on the previous Delivery Year. We thought it reasonable to interpret this to provide that if a shortfall was in effect in the Delivery year in which the shortfall occurred should be based on the previous Delivery Year. Once that shortfall is made up, the new Applicable Percentage would be based on the second Delivery Year. I hope this helps with your understanding of our proposal.

Perhaps it would be best if we scheduled a call for tomorrow to go over the details of that.

REPORT OF COMMUNICATIONS WITH THE ILLINOIS POWER AGENCY

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Date of Communication: 4/30/13

Time of Communication: 3:39 PM

Type of Communication:

- ☐ Telephone
☐ In Person
☒ Electronic (Email, Fax, Etc.) – Attach A Complete Copy of the Entire Communication String
☐ Written – Attach Copy
☐ Other



Initiator:

Initiator of Communication: Thomas Russell
Representing: ComEd
Location: Chicago, IL
Email Address (if communication was via email): thomas.russell@exeloncorp.com
Telephone Number (if telephonic):

Is this person a Lobbyist required to register under the Lobbyist Registration Act

Duration of Call or In-Person Communication:
☐ Yes ☒ No

Recipient(s): (If there are additional persons involved in the communication, attach an additional sheet that lists the other participants' names, job titles, which entity they represent, email address and/or telephone number, if applicable)

Recipient One Name: Anthony Starr
Recipient Title: Director
Representing: IPA
Location: Chicago, IL
Email Address (if communication was via email): anthony.starr@illinois.gov
Telephone Number (if telephonic):

Recipient Two Name: see attached e-mail chain
Recipient Title:
Representing:
Location:
Email Address (if communication was via email):
Telephone Number (if telephonic):

Recipient Three Name:
Recipient Title:
Representing:
Location:
Email Address (if communication was via email):
Telephone Number (if telephonic):

If any of these additional participants are lobbyists required to register under the Lobbyist Registration Act, they must submit a written report to be submitted with this communications report to the Procurement Policy Board that memorializes the communication that includes, but is not limited to (i) the date and time of each communication; (ii) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended; (iii) the identity and job title of the person to whom each communication was made; (iv) if a response is made, the identity and job title of the person making each response; (v) a detailed summary of the points made by each person involved in the communication; (vi) the duration of the communication; (vii) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and (viii) any other pertinent information.

Communication Details:

Provide a detailed summary of the points made by each person involved in the communication:
Describes some follow-up discussions that ComEd with the long-term renewable suppliers regarding the ICC-required curtailment of purchases from the suppliers.

Was a response made? If so, complete the following for each person making the response (attach an additional sheet that lists the other respondents' names, job titles, which entity they represent, email address and/or telephone number, if applicable).

Respondent Name:

See attached e-mail chain

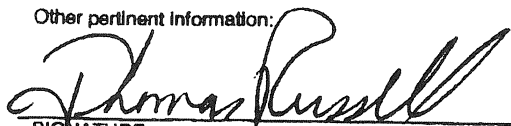
Respondent Title:


Location:

Telephone Number (if telephonic):

Provide a detailed summary of the response:

Other pertinent information:


SIGNATURE


DATE

Grier, Adrienne C:(ComEd)

From: Russell, Thomas J.:(BSC)
Sent: Tuesday, April 30, 2013 3:39 PM
To: 'Zuraski, Richard'
Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd); 'Feeley, John'; 'kgottshall@bostonpacific.com'; '@ Star, Anthony'; '@ Strong, Michael R'; 'Kennedy, Tom'; 'agisselquist@bostonpacific.com'
Subject: RE: Supplier Questions
Attachments: Curtailment Clarification 4 29 13.pdf; Response to Supplier 043013.docx

All,

We received some follow-up questions from one of the suppliers, FPL. We drafted a response to the first question that we would intend to again circulate to all suppliers once we reach agreement. The other two questions we will respond to more informally directly to FPL. We think we already responded to the attached question, but elaborated a bit more. Let us know if you have any suggestions or are ok with our proposed response.

From: Zuraski, Richard [mailto:rzuraski@icc.illinois.gov]
Sent: Monday, April 22, 2013 10:42 AM
To: Russell, Thomas J.:(BSC)
Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd); Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions

Tom,

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Of Andrew's three options, I can support either 1 or 3.

I am available anytime today to discuss, if necessary.

From: @ Russell, Thomas
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Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
Subject: RE: Supplier Questions

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From: Andrew Gisselquist [mailto:agisselquist@bostonpacific.com]

Sent: Fri 4/19/2013 5:42 PM

To: Zuraski, Richard; Russell, Thomas J.:(BSC)

Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

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On the applicable percentage question, BP is weighing in to point out a couple implications of the approach being considered by ComEd and Richard, as well as two alternative options. The attached file has examples for each of these three Options, the same three examples (in terms of REC production) for each. That excel file is just a modification of what Richard recently sent around.

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- A. Suppliers who face a shortfall in production in Year 1 and then produce as many RECs "as expected" going forward are never able to make up that shortfall ("as expected" production in the example is 1 million RECs, equal to the annual contract quantity divided by the applicable percentage the supplier bid in).
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- A. Option 2 gives suppliers more flexibility to make up any shortfall – in the attached example see Option 2, row 8 where the supplier chooses an applicable percentage of 45% instead of 40%. This eliminates the shortfall for the remaining years.
- B. However, it is unclear to us if such a method is consistent with the contracts as written. If the relevant lawyers agree, this may not be a productive direction to go in.

Finally, Option 3, which may be more straightforward than either other option. In Option 3, Suppliers simply maintain the current year's applicable percentage for the entire year. See tab "Option 3" in the attached file.

- A. As suppliers have mentioned on phone calls, with something like Option 3 they may have a hard time meeting their annual contract quantity and filling shortfalls from the previous year if the applicable percentage declines, as is happening now.
- B. Option 3 implicitly argues that suppliers should have bid cautiously. If suppliers face shortfalls because their overall production is not as high as expected, they have to either hope their wind farm produces more in the future or they will have to make those shortfalls up. Note that all the concerns about suppliers perpetually having to carry forward shortfalls disappear if a supplier's wind farm "overproduces" enough in a year (see tab "Option 3", row 18 where the wind farm produces 1.1 million RECs and there is no shortfall going forward).
- C. Option 3 does not have the same concern about a bounce back up in applicable percentage as with Option 1, point C – suppliers simply face one applicable percentage all year long.

Boston Pacific would probably support Option 3 as a compromise position. With it, the treatment of applicable percentage can be consistent with from year to year, no matter whether curtailments increase or decrease. Option 1 also has benefits, but we are concerned about what may happen if the applicable percentage ever goes back up - issue C above. That is, unless suppliers could be given flexibility to use the larger applicable percentage in that case. Option 2 has benefits of flexibility for suppliers but there are the concerns about how it fits with the existing contract. Also, to the extent it may change the contract rules, it may frustrate bidders who did not win or win as much because they bid under a strict interpretation of the contract.

Andrew

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Friday, April 19, 2013 1:21 PM

To: @ Russell, Thomas

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; Andrew Gisselquist; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

Let's go one more round of emails before deciding if a conf call is needed to discuss the Applicable Percentage, et al.

By the way, thank you for the additional explanation. It was very helpful. I think that the attached spreadsheet (columns A – K) now embodies your proposal. Would you please confirm if that is true, for each of the four examples? If true, then the proposal seems fair and reasonable to me, but I would like BP to tell us if they think otherwise, with concrete examples.

My preference would be to proceed without contract amendments, but if BP believes that the contract's original intent or spirit (or whatever you want to call it) is being violated by the proposal, amending the contract may be more appropriate. But let's see what they have to say, first.

On a separate topic, Andrew G. from BP said in a recent email:

First, we haven't heard anything about ComEd's first Q&A, on the interpretation of the imputed REC price. Does that mean we all agree with ComEd on that point? Boston Pacific would be fine with that.

I just wanted to confirm that ICC Staff is also fine with that.

Thanks.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

IMPORTANT NOTICE:

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Thank you for your cooperation.

From: @ Russell, Thomas

Sent: Thursday, April 18, 2013 4:39 PM

To: Zuraski, Richard

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Rich,

Thanks for your response and proposal. We will take a look at it. One thing we were trying to achieve is to come up with a solution that we felt reasonably comfortable could be supported by the existing contractual language, as I am not sure how free we are to change it and how we would get that done and approved anyway. The operative language in regards to the "Applicable Percentage" is in section D of the Confirmation. It provides "...the Applicable Percentage shall be reduced proportional to the reduction in the Annual Contract Quantity for that Delivery Year." As I understand your proposal, you are proposing to reduce the Applicable Percentage proportionally but with a one-year lag, right? So, is that something you are comfortable implementing by posting the Q&A or having us circulate it to the suppliers explaining that is how we intend to interpret and apply the Applicable Percentage in this situation, or did you see a need to more formally amend the agreements in some fashion. We would prefer some posting or other notification if everyone is comfortable with what we eventually decide on.

As you note, our proposal (which is actually what the suppliers requested) has some similar contract interpretation issues. Section B(1) provides that any energy and RECs produced shall first be used to satisfy any shortfall from the previous Delivery Year. We thought it reasonable to interpret this to provide that the same Applicable Percentage that was in effect in the Delivery year in which the shortfall occurred should be used to make up that shortfall in the next Delivery Year. Once that shortfall is made up, the new Applicable Percentage would be in effect for the remainder of the second Delivery Year. I hope this helps with your understanding of our proposal.

Perhaps it would be best if we scheduled a call for tomorrow to go over the proposals. Let me know if you want us to do that.

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Thursday, April 18, 2013 3:16 PM

To: Russell, Thomas J.:(BSC)

Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

In the second Q&A, it states:

- For a situation where the Applicable Percentage changes from one Delivery Year to the next, ComEd believes it is reasonable to use **two different Applicable Percentages** to make the above calculation. For the purposes of satisfying a short-fall from a previous Delivery Year, it is appropriate to use the Applicable Percentage for that Delivery Year. For the purposes of determining the Annual Contract Quantity for the current Delivery Year and

any carry-over quantity for the next Delivery Year, the Applicable Percentage for the current Delivery Year should be used.

The above description confuses me, and I don't understand how there can be two Applicable Percentages in any given year (if that is what you mean). The Applicable Percentage is the percentage of output in each hour that is considered a part of the Contract. At what point in time within the year does the Applicable Percentage change, under your proposal?

In any event, I am wondering if it might be better to allow the suppliers to simply restate their Applicable Percentage, within certain bounds, whenever there is a change in contract quantities.

For example, suppose that in April of 2013, the current contract quantity (for the June 2012-May 2013 period) is 100% of the original contract quantity, but the supplier can choose to leave or go to 80% of the original contract quantity for the June 2013-May 2014 period. If the supplier's original and Applicable Percentage (for the June 2012-May 2013 period) was 50%, then for the upcoming June 2013-May 2014 period, the supplier could choose any Applicable Percentage between $50\% \times 80\%$ and 50% .

Suppose that, in April of 2014, the supplier can choose to leave or go from the 80% level to 70% of the original contract quantity for the June 2014-May 2015 period. For the June 2014-May 2015 period, the supplier could choose any Applicable Percentage between $50\% \times 70\%$ and $50\% \times 80\%$.

So, to be clear, the new Applicable Percentage (AP_{t+1}) may be restated by the supplier, within the following bounds:

Between $AP_0 \times CQ_t / CQ_0$ and $AP_0 \times CQ_{t+1} / CQ_0$,

Where:

AP_0 is the original Applicable Percentage

CQ_0 is the original contract quantity

CQ_t is the current contract quantity (determined in the previous April)

CQ_{t+1} is the new contract quantity (determined in the present April)

The attached workbook provides a way to illustrate the simultaneous workings of the Applicable Percentage, the limitation on carrying excess production forward, and the limitation on carrying excess production backward to make up for a previous shortfall. As for the carrying forward and backward, I think I have captured what you describe in the Q&A. If so, I think it is reasonable and workable.

Note that, in the attached workbook, I simply assume that the supplier would choose to change the Applicable Percentage to as follows:

$$AP_{t+1} = AP_0 \times CQ_t / CQ_0$$

(notwithstanding my proposal to give the supplier a choice anywhere between $AP_0 \times CQ_t / CQ_0$ and $AP_0 \times CQ_{t+1} / CQ_0$)

If for some reason, you do not wish to provide suppliers with such a choice and want to propose using a rule, such a rule could be illustrated by changing the workbook formula for the Applicable Percentage.

Please let me know if you have any questions or comments about this approach. I am also interested in the IPA's and Boston Pacific's views on the matter.

Thanks you.

Richard J. Zuraski
Economist
Policy Division
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701
Phone: 217-785-4150
rzuraski@icc.illinois.gov

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Thank you for your cooperation.

From: @ Russell, Thomas
Sent: Thursday, April 18, 2013 11:21 AM
To: Zuraski, Richard; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com
Subject: Supplier Questions

All,

We had several meetings this week with a number of the long-term renewable suppliers concerning the implementation of the curtailment and the purchase of the RECs. There were two general issues they raised they we promised to get back to them with answers after discussing the issues with you folks. The attached document contains proposed responses to those two issues. The first relates to the determination of the imputed REC price for the purchase of the new RECs. We really do not believe that there is any uncertainty as to that price, but since several suppliers raised it here and in the context of the IPA's separate REC procurement process, we thought it worthwhile to put a response in writing. Second, a more difficult question relates to the application of the shortfall, carry-over and applicable percentage provisions in the long-term renewable contracts in light of the curtailment. We believe the contract language is susceptible to several reasonable interpretations. We opted for an interpretation that we thought was supportable and fair to all parties.

Please let us know if you have any suggestions or revisions to our answers. If you think it would be helpful to discuss, let me know and I can set up a conference call for us.

After we reach a consensus on the answers we need to get back to the suppliers. We can send to all suppliers or, if you think more appropriate, we could post on the IPA website in a manner similar to how we usually have handled supplier questions. In fact, it would be useful to discuss how to handle this going forward or for next year. It may be more appropriate to use a process that we typically have used and to have the contracts go out through the IPA and to have all supplier contact go through the IPA as well. Let us know what you think. We can continue with how we have been proceeding for now, but really would like to discuss this with you for next year.

This e-mail and any attachments are confidential, may contain legal, professional or other privileged information, and are intended solely for the

addressee. If you are not the intended recipient, do not use the information in this e-mail in any way, delete this e-mail and notify the sender. -EXCIP

Grier, Adrienne C:(ComEd)

From: Star, Anthony [Anthony.Star@Illinois.gov]
Sent: Wednesday, May 01, 2013 10:46 AM
To: Russell, Thomas J.:(BSC); Strong, Michael; rzuraski@icc.illinois.gov
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: Re: Supplier Questions

Yes.

From: Thomas.Russell@exeloncorp.com [mailto:Thomas.Russell@exeloncorp.com]
Sent: Wednesday, May 01, 2013 10:11 AM Central Standard Time
To: Strong, Michael; rzuraski@icc.illinois.gov <rzuraski@icc.illinois.gov>
Cc: william.mcneil@ComEd.com <william.mcneil@ComEd.com>; stephen.lesniak@ComEd.com <stephen.lesniak@ComEd.com>; eric.long@ComEd.com <eric.long@ComEd.com>; james.baloun@ComEd.com <james.baloun@ComEd.com>; Feeley, John; kgottshall@bostonpacific.com <kgottshall@bostonpacific.com>; Star, Anthony; tkennedy@icc.illinois.gov <tkennedy@icc.illinois.gov>; agisselquist@bostonpacific.com <agisselquist@bostonpacific.com>
Subject: RE: Supplier Questions

So is the IPA ok with our proposed response?

From: Strong, Michael [mailto:Michael.Strong@Illinois.gov]
Sent: Tuesday, April 30, 2013 4:37 PM
To: Russell, Thomas J.:(BSC); rzuraski@icc.illinois.gov
Cc: McNeil, William P:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S:(ComEd); Baloun, James M:(ComEd); Feeley, John; kgottshall@bostonpacific.com; Star, Anthony; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions

That is helpful confirmation of the IPA's understanding that ComEd does not plan to make any supplier-specific amendments to the agreement. The IPA is planning to take the same approach.

From: Thomas.Russell@exeloncorp.com [mailto:Thomas.Russell@exeloncorp.com]
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Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; Star, Anthony; Strong, Michael; tkennedy@icc.illinois.gov; agisselquist@bostonpacific.com
Subject: RE: Supplier Questions

Yes, generally to the effect the ComEd does not support making any amendments to the agreement.

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Subject: RE: Supplier Questions

Staff concurs with Boston Pacific comments w/r/t ComEd's proposed response to #1.

With respect to the "other two questions" to which ComEd "will respond to more informally directly to FPL," would I be correct in inferring that those responses will be variations on a theme of "no"?

From: Andrew Gisselquist [<mailto:agisselquist@bostonpacific.com>]
Sent: Tuesday, April 30, 2013 4:12 PM
To: @ Russell, Thomas; Zuraski, Richard
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
Subject: RE: Supplier Questions

All,

Boston Pacific is fine with ComEd's proposed response to #1. Our only caveats are obvious ones: (1) the April date is missing in the second line under "Response", and (2) ComEd should remove FPL's Annual Percentage before circulating this response to other suppliers.

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- B. Option 3 implicitly argues that suppliers should have bid cautiously. If suppliers face shortfalls because their overall production is not as high as expected, they have to either hope their wind farm produces more in the future or they will have to make those shortfalls up. Note that all the concerns about suppliers perpetually having to carry forward shortfalls disappear if a supplier's wind farm "overproduces" enough in a year (see tab "Option 3", row 18 where the wind farm produces 1.1 million RECs and there is no shortfall going forward).
- C. Option 3 does not have the same concern about a bounce back up in applicable percentage as with Option 1, point C – suppliers simply face one applicable percentage all year long.

Boston Pacific would probably support Option 3 as a compromise position. With it, the treatment of applicable percentage can be consistent with from year to year, no matter whether curtailments increase or decrease. Option 1 also has benefits, but we are concerned about what may happen if the applicable percentage ever goes back up - issue C above. That is, unless suppliers could be given flexibility to use the larger applicable percentage in that case. Option 2 has benefits of flexibility for suppliers but there are the concerns about how it fits with the existing contract. Also, to the extent it may change the contract rules, it may frustrate bidders who did not win or win as much because they bid under a strict interpretation of the contract.

Andrew

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Friday, April 19, 2013 1:21 PM

To: @ Russell, Thomas

Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; Katherine Gottshall; Andrew Gisselquist; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

Let's go one more round of emails before deciding if a conf call is needed to discuss the Applicable Percentage, et al.

By the way, thank you for the additional explanation. It was very helpful. I think that the attached spreadsheet (columns A – K) now embodies your proposal. Would you please confirm if that is true, for each of the four examples? If true, then the proposal seems fair and reasonable to me, but I would like BP to tell us if they think otherwise, with concrete examples.

My preference would be to proceed without contract amendments, but if BP believes that the contract's original intent or spirit (or whatever you want to call it) is being violated by the proposal, amending the contract may be more appropriate. But let's see what they have to say, first.

On a separate topic, Andrew G. from BP said in a recent email:

First, we haven't heard anything about ComEd's first Q&A, on the interpretation of the imputed REC price. Does that mean we all agree with ComEd on that point? Boston Pacific would be fine with that.

I just wanted to confirm that ICC Staff is also fine with that.

Thanks.

Richard J. Zuraski
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Thank you for your cooperation.

From: @ Russell, Thomas
Sent: Thursday, April 18, 2013 4:39 PM
To: Zuraski, Richard
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom
Subject: RE: Supplier Questions

Rich,

Thanks for your response and proposal. We will take a look at it. One thing we were trying to achieve is to come up with a solution that we felt reasonably comfortable could be supported by the existing contractual language, as I am not sure how free we are to change it and how we would get that done and approved anyway. The operative language in regards to the "Applicable Percentage" is in section D of the Confirmation. It provides "...the Applicable Percentage shall be reduced proportional to the reduction in the Annual Contract Quantity for that Delivery Year." As I understand your proposal, you are proposing to reduce the Applicable Percentage proportionally but with a one-year lag, right? So, is that something you are comfortable implementing by posting the Q&A or having us circulate it to the suppliers explaining that is how we intend to interpret and apply the Applicable Percentage in this situation, or did you see a need to more formally amend the agreements in some fashion. We would prefer some posting or other notification if everyone is comfortable with what we eventually decide on.

As you note, our proposal (which is actually what the suppliers requested) has some similar contract interpretation issues. Section B(1) provides that any energy and RECs produced shall first be used to satisfy any shortfall from the previous Delivery Year. We thought it reasonable to interpret this to provide that the same Applicable Percentage that was in effect in the Delivery year in which the shortfall occurred should be used to make up that shortfall in the next Delivery Year. Once that shortfall is made up, the new Applicable Percentage would be in effect for the remainder of the second Delivery Year. I hope this helps with your understanding of our proposal.

Perhaps it would be best if we scheduled a call for tomorrow to go over the proposals. Let me know if you want us to do that.

From: Zuraski, Richard [<mailto:rzuraski@icc.illinois.gov>]

Sent: Thursday, April 18, 2013 3:16 PM

To: Russell, Thomas J.:(BSC)

Cc: McNeil, William P.:(ComEd); Lesniak, Stephen L.:(ComEd); Long, Eric S.:(ComEd); Baloun, James M.:(ComEd); Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R; Kennedy, Tom

Subject: RE: Supplier Questions

Tom,

In the second Q&A, it states:

For a situation where the Applicable Percentage changes from one Delivery Year to the next, ComEd believes it is reasonable to use **two different Applicable Percentages** to make the above calculation. For the purposes of satisfying a short-fall from a previous Delivery Year, it is appropriate to use the Applicable Percentage for that Delivery Year. For the purposes of determining the Annual Contract Quantity for the current Delivery Year and any carry-over quantity for the next Delivery Year, the Applicable Percentage for the current Delivery Year should be used.

The above description confuses me, and I don't understand how there can be two Applicable Percentages in any given year (if that is what you mean). The Applicable Percentage is the percentage of output in each hour that is considered a part of the Contract. At what point in time within the year does the Applicable Percentage change, under your proposal?

In any event, I am wondering if it might be better to allow the suppliers to simply restate their Applicable Percentage, within certain bounds, whenever there is a change in contract quantities.

For example, suppose that in April of 2013, the current contract quantity (for the June 2012-May 2013 period) is 100% of the original contract quantity, but the supplier can choose to leave or go to 80% of the original contract quantity for the June 2013-May 2014 period. If the supplier's original and Applicable Percentage (for the June 2012-May 2013 period) was 50%, then for the upcoming June 2013-May 2014 period, the supplier could choose any Applicable Percentage between 50% \times 80% and 50%.

Suppose that, in April of 2014, the supplier can choose to leave or go from the 80% level to 70% of the original contract quantity for the June 2014-May 2015 period. For the June 2014-May 2015 period, the supplier could choose any Applicable Percentage between 50% \times 70% and 50% \times 80%.

So, to be clear, the new Applicable Percentage (AP_{t+1}) may be restated by the supplier, within the following bounds:

Between $AP_0 \times CQ_t/CQ_0$ and $AP_0 \times CQ_{t+1}/CQ_0$,

Where:

AP_0 is the original Applicable Percentage

CQ_0 is the original contract quantity

CQ_t is the current contract quantity (determined in the previous April)

CQ_{t+1} is the new contract quantity (determined in the present April)

The attached workbook provides a way to illustrate the simultaneous workings of the Applicable Percentage, the limitation on carrying excess production forward, and the limitation on carrying excess production backward to make up for a previous shortfall. As for the carrying forward and backward, I think I have captured what you describe in the Q&A. If so, I think it is reasonable and workable.

Note that, in the attached workbook, I simply assume that the supplier would choose to change the Applicable Percentage to as follows:

$$AP_{t+1} = AP_0 \times CQ_t / CQ_0$$

(notwithstanding my proposal to give the supplier a choice anywhere between $AP_0 \times CQ_t / CQ_0$ and $AP_0 \times CQ_{t+1} / CQ_0$)

If for some reason, you do not wish to provide suppliers with such a choice and want to propose using a rule, such a rule could be illustrated by changing the workbook formula for the Applicable Percentage.

Please let me know if you have any questions or comments about this approach. I am also interested in the IPA's and Boston Pacific's views on the matter.

Thanks you.

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Thank you for your cooperation.

From: @ Russell, Thomas
Sent: Thursday, April 18, 2013 11:21 AM
To: Zuraski, Richard; Feeley, John; kgottshall@bostonpacific.com; agisselquist@bostonpacific.com; @ Star, Anthony; @ Strong, Michael R
Cc: william.mcneil@ComEd.com; stephen.lesniak@ComEd.com; eric.long@ComEd.com; james.baloun@ComEd.com
Subject: Supplier Questions

All,

We had several meetings this week with a number of the long-term renewable suppliers concerning the implementation of the curtailment and the purchase of the RECs. There were two general issues they raised they we promised to get back to them with answers after discussing the issues with you folks. The attached document contains proposed responses to those two issues. The first relates to the determination of the imputed REC price for the purchase of the new RECs. We really do not believe that there is any uncertainty as to that price, but since several suppliers raised it here and in the context of the IPA's separate REC procurement process, we thought it worthwhile to put a response in writing. Second, a more difficult question relates to the application of the shortfall, carry-over and applicable percentage provisions in the long-term renewable contracts in light of the curtailment. We believe the contract language is susceptible to several reasonable interpretations. We opted for an interpretation that we thought was supportable and fair to all parties.

Please let us know if you have any suggestions or revisions to our answers. If you think it would be helpful to discuss, let me know and I can set up a conference call for us.

After we reach a consensus on the answers we need to get back to the suppliers. We can send to all suppliers or, if you think more appropriate, we could post on the IPA website in a manner similar to how we usually have handled supplier questions. In fact, it would be useful to discuss how to handle this going forward or for next year. It may be more appropriate to use a process that we typically have used and to have the contracts go out through the IPA and to have all supplier contact go through the IPA as well. Let us know what you think. We can continue with how we have been proceeding for now, but really would like to discuss this with you for next year.

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